



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup
Professionals

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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on August 19, 2009

[Approved on September 30, 2009]

Prepared by: Terry Wood

Meeting Location: Massachusetts Department of Environmental Protection, Central Regional Office, Worcester, MA.

- 1. Call to Order:** Robert Luhrs called the meeting to order at 12:59 p.m. Also present were Gail Batchelder, Janine Commerford, Kirk Franklin, Jack Guswa, Christophe Henry, Gretchen Latowsky, Kelley Race and Debra Stake. Committee members absent: Debra Farnsworth. Staff members present were Allan Fierce, Brian Quinlan, Lynn Read, Terry Wood, Al Wyman and Ron Viola.
- 2. Announcements:** After some discussion, Ms. Batchelder made a motion to move item 8. I. (Procedural issues regarding the review of license applications from individuals whose previous licenses were revoked or who voluntarily surrendered their licenses) on the Board Meeting docket to the agenda for the meeting of the Professional Conduct Committee. The motion was not seconded.
- 3. Previous Minutes:** The draft minutes of the meeting held on July 23rd were approved with minor edits.
- 4. Old Business**

A. Status of CRTS

At Mr. Luhrs' request, Board staff reported on major developments in the active cases since last month.

B. Report from Screening Team re: 09C-02

The screening team (Mr. Franklin, Ms. Commerford and Mr. Fierce) reported that they are reviewing additional documentation and anticipate they will be prepared to make a recommendation to the Committee whether or not to appoint a Complaint Review Team to investigate this complaint at next month's meeting.

C. Report from Course Subcommittee

Mr. Fierce stated that the subcommittee has not met.

5. New Business**A. Discussion requiring the handling of future appeals**

Mr. Fierce stated that, in light of the fact that the Committee has decided it does not want to use the Massachusetts Division of Administrative Law Appeals (DALA) to assist the Board with future administrative appeal hearings, the Committee needs to plan for future appeal hearings. He stated that it is unclear whether it would make sense to use MassDEP's Office of Administrative Appeals ("OAA") for future appeals because Laurel Mackay, who has significant 21E experience and who assisted with the early stages of a recent Board appeal in a case that eventually settled, is no longer hearing cases at OAA. Mr. Fierce added that the other attorneys hearing appeals at OAA have very limited, if any, 21E-related experience. He stated that the Committee had discussed options for handling appeal hearings several years ago. These options included using a DALA or non-DALA hearing officer and two Board members to preside over the hearing and prepare a recommended decision. Mr. Fierce stated that the Board staff proposes that the Board use a panel comprised of two Board members and a staff attorney to preside over the next administrative hearing. The two Board members would be relieved of any CRT duties during the time the appeal was active and the staff attorney on the panel would be responsible to prepare a draft of the panel's recommended decision for review and edit by the two Board members.

After some discussion, Ms. Commerford stated that the Committee could explore the possibility whether Laurel Mackay or some other attorney at MassDEP with 21E-related experience could be loaned back to OAA for the purpose of serving as a hearing officer for an LSP Board appeal. The consensus of the Committee was that Ms. Commerford and Mr. Fierce should speak with MassDEP staff about this possibility and report back next month.

6. Future Meetings

The Committee is scheduled to meet on September 30 at a location to be determined. The Committee is also scheduled to meet on October 29 at a location to be determined.

7. Adjournment: The meeting was adjourned at approximately 1:41 p.m.